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February 17, 2006

Ex Parte

RE: CC Docket No. 03-123, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Ms. Dortch:

On February 17, 2006, Richard Ellis, Tiina Keder, Sandra O'Brian, Ann Rakestraw, and Ron Wood from Verizon met with Jay Keithley, Thomas Chandler, and Cheryl King of the Consumer and Governmental Affairs Bureau to discuss penalties imposed on IP and Video Relay Providers in instances when speed of answer levels are not met.

Verizon argued that NECA does not have the legal authority to impose penalties based on failure to meet speed of answer requirements. Verizon noted that implementation of a penalty structure that denies providers compensation for any day in which daily IP Relay speed of answer levels are not met, or for any month in which video relay levels are not met, would significantly increase costs without a corresponding increase in overall quality of service (since providers would overstaff centers to respond to extraordinary circumstances). This structure also fails to differentiate between providers that miss the target on an incidental basis or by very small percentage and providers that frequently miss their target, or miss their target by a large percentage. Verizon noted that IP and Video relay services are highly competitive, and users can easily choose from alternative providers if they are dissatisfied with the service from any individual company.

The handout used in this meeting is attached. Please do not hesitate to contact me if you have any questions about this matter.

Sincerely,

A handwritten signature in black ink that reads "Richard T. Ellis".

cc: Thomas Chandler
Jay Keithley
Cheryl King

IP Relay Service and Video Relay Service: Speed of Answer

February 17, 2006



Verizon Is Committed To Providing Quality and Timely Services to IP Relay and Video Relay Service Users

- Verizon is a leading provider of IP Relay, Video Relay Service, and traditional Telecommunications Relay Service. Verizon's commitment is to continue to provide high quality IP Relay and Video Relay services to serve the deaf, hard of hearing and speech disabled community.
- TRS providers have every incentive to provide quality service and prompt call answer times in order to compete in the marketplace for TRS services. Verizon's loyal customer base is reflective of our high quality service.
- Verizon is one of the largest providers of IP Relay Service, with five IP Relay call centers handling hundreds of thousands of calls each month. Verizon developed the first application for wireless IP Relay Service.
- Verizon is actively working to grow its Video Relay Service business to enable more users who prefer using American Sign Language to communicate through a high speed internet connection.



TRS Providers Face A Number of Requirements, Including Speed of Answer

- TRS providers must meet a number of operational and technical standards, including communication assistant training and competency levels, call confidentiality requirements, and speed of answer requirements.
- The FCC's speed of answer rules, 47 C.F.R. § 64.604(b)(2), require:
 - For IP Relay Services (IPRS)
 - 85 percent of all calls must be answered within 10 seconds.
 - The IPRS speed of answer is measured on a daily basis.
 - For Video Relay Services (VRS)
 - Beginning on January 1, 2006, providers must answer 80 percent of all calls within 180 seconds.
 - By July 1, 2006, the answer speed drops to 150 seconds; beginning January 1, 2007, it becomes 120 seconds.
 - VRS speed of answer requirements are calculated on a monthly basis.



NECA Has Recently Stated It Will Not Compensate Carriers That Miss Speed of Answer Requirements

- On February 6, 2006, NECA informed TRS providers that, retroactive to January 1, 2006, providers would not be paid if they failed to meet speed of answer requirements. Specifically, NECA stated:
 - If IP Relay answer time is missed for a day, the Interstate TRS Fund will not reimburse the provider for the IP minutes handled that day;
 - If Video Relay Service answer time is missed for the month, the Interstate TRS fund will not reimburse the provider for a month's worth of Video Relay Service minutes.
- NECA stated that its decision not to pay providers who fail to meet the speed of answer requirements was based on 47 C.F.R. § 64.604(c)(5)(iii)(E), which states, "The TRS Fund Administrator shall make payments *only* to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604," (emphasis added)



NECA's Decision Was Wrong As A Matter Of Law, Because It Failed To Consider Other Aspects of the TRS Rules

- NECA misinterpreted the requirement that “only eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604, . . .”
 - This is a reference to the fact that only certain “TRS providers [are] eligible for receiving payments from the TRS Fund” – *i.e.*, those receiving certification from the state or FCC. 47 C.F.R. § 64.604(c)(5)(iii)(F).
 - Even if a provider fails to meet a speed of answer requirement for one day (for IP Relay service) or one month (for Video Relay Service), that does not mean the provider is not generally “operating pursuant to the mandatory minimum standards” within the meaning of § 64.604.



NECA's Decision Was Wrong As A Matter Of Law, Because It Failed To Consider Other Aspects of the TRS Rules (cont'd)

- NECA interprets only one sentence in the rules, while ignoring other parts of the rules that require adequate and fair compensation to TRS providers. Section 64.604(c)(5)(iii)(E) also provides that:
 - TRS providers shall be paid “based on formulas approved or modified by the Commission,” which “*shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS*” (emphasis added).
 - TRS compensation formulas “shall be *based on total monthly interstate TRS minutes of use*,” which are “defined as the minutes of use for completed interstate TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit” (emphasis added).
- Nothing in the TRS payment formulas authorizes NECA to disallow compensation for minutes of use based on providers' failure to meet daily or monthly speed of answer requirements.



NECA's Decision Was Wrong As A Matter of Policy, Because It Will Increase Costs To An Already Rapidly Growing TRS Fund

- The TRS Fund has grown dramatically in recent years, fueled largely by demand for IP Relay and Video Relay Services.
 - IP Relay service represents 32% of the 2006 Interstate TRS Fund. IP Relay minutes have grown from 700,000 in mid-2002 to 6.5 million by the end of 2005.
 - VRS represents 59% of the Interstate TRS Fund, with minutes growing from zero in early 2002 to over 3 million at the end of 2005.
- Because the potential penalties are so severe, NECA's decision is likely to cause providers to increase staffing to cover potential "peak" call levels to avoid the risk of longer speed of answer if unexpected heavy call volumes materialize. Such uneconomic overstaffing will result in personnel being idle or underutilized during non-peak periods.
- For IP Relay in particular, measuring performance on a daily basis does not allow for any error; even a small call spike can result in a drop in speed of answer time averages, risking a loss of an entire day's revenues.
- Because the TRS cost formula is based on an average of carriers' costs, an increase in staffing among all TRS providers will lead to an increase in the formula for reimbursement.



Creating Incentives For Inefficient Staffing Is Inconsistent With The TRS Rules

- The NECA decision creates incentives that are inconsistent with the TRS rules, which anticipate efficient staffing levels tied to projected calling volumes, comparable to service provided to traditional voice callers.
 - The rules state that TRS staffing should be “adequate” to “provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.” 47 CFR 64.604(b)(2)(i)
 - Similarly, the speed of answer rules for IP Relay state that “adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.” 47 CFR 64.604(b)(2)(ii)



NECA's Decision Was Wrong As A Matter of Policy, Because It is Unduly Punitive

- The penalties suggested by NECA are unduly punitive:
 - By providing that *no* compensation will be paid for *any* minutes of use provided for the day (IP Relay) or month (Video Relay) in which a speed of answer standard was missed, NECA fails to recognize that the provider likely was meeting the mandatory minimum standards for a large portion of the calls handled in the applicable day or month.
 - The penalties are the same regardless of whether a provider misses the mandatory minimum standard by a small amount or by a wide margin.
- For IP Relay Service, the penalties are exacerbated by the fact that NECA is relying on daily, rather than the monthly, minimum standards.
 - Providers that consistently meet the minimum standard on a monthly basis may be penalized for unexpected call spikes driven by external events beyond their control on any given day.



In Other Contexts, Penalties For Failure To Meet Service Quality Standards Are Far More Limited Than What NECA Imposed

- In the state context, regulators have: (1) imposed penalties only for failures to meet standards when they are repeated or significant; and (2) penalties are scaled to meet the transgression. For example:
 - The California state TRS contract assesses liquidated damages that depend on the number of infractions and relative amount of traffic. Damages are not assessed until the 11th infraction in a month and range from \$250 to \$1000 per infraction above that level. Liquidated damages are not assessed when the infraction is a direct result of an increase of more than 10 percent in traffic, and total liquidated damages in a month cannot exceed 4 to 6 percent of the provider's invoice, depending on the number of calls handled.
 - Likewise, numerous states have business office speed-to-answer requirements. Many states do not impose penalties for failure to meet these requirements, and where penalties apply they are generally less than \$1000 per day and often are not assessed unless the service provider has missed the benchmark for more than two consecutive months.
 - State Performance Assurance Plans, which the FCC reviewed during the Section 271 approval process, require payments that generally are scaled to the severity and frequency with which a measure is missed.



Summary

- NECA's decision was wrong as a matter of law because it failed to consider other aspects of the TRS rules, and wrong and as a matter of policy, because it failed to consider the costs to the TRS fund.
- The penalties NECA is imposing are far more punitive than other comparable penalties for failure to meet service quality standards.
- The FCC should direct NECA to stop withholding payment based on missed speed of answer requirements and ensure that IPRS and VRS providers are compensated for their reasonable costs of providing interstate TRS for all minutes of use.